IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/06/2004

CORAM

THE HONOURABLE MRS. JUSTICE R.BANUMATHI

CRL.APPEAL No.408 of 1997

Duraisamy ... Appellant /
Accused.

-Vs-

State by
The Inspector of Police,
Vellakoil Police Station,
periyar District at
Erode. ... Respondent.

Criminal Appeal against the judgment dated 25.04.1997 made in S.C. No.157 of 1996 on the file of Principal Sessions Judge, Periyar District at Erode.

!For appellant : Mr.A.K.Kumarasamy.

^For respondent : Mr. A.N.Thambidurai,
Government Advocate.
(Crl. Side)

:J U D G M E N T

Appellant is the accused in S.C.No.157 of 1996 on the file of Sessions Court, Erode. By the Judgment dated 25.04.1997, the Appellant / Accused was convicted under Sec.304 Part II I.P.C. for causing the death of his brother-in-law Natarajan.

2. Shorn of factual details of the occurrence and the prosecution case, the relationship of the parties and the common facts could be firstly referred to. The accused, deceased Natarajan and prosecution witnesses are related as under:-

Marayammal - P.W.5
|

| | |
Sornathal Poovathal Natarajan - deceased
= Periasamy =Duraisamy = Chandrakala (P.W.4)
(P.W.1) Accused. D/o.Kumarasamy (P.W.2)

3. The deceased Natarajan was running a Power Loom Factory. He suffered extensive loss of more than Rs.75,000/-. He borrowed Rs.75,00 0/- from his brother-in-law P.W.1 - Periasamy and delivered possession of 35 acres of family lands to P.W.1. P.W.1 was thus in possession of vast extent of the family properties as Bohgium. The accused was in cultivation of Thundukkadu about an extent of 4 acres. Natarajan was in cultivation of Athikkattu Thottam. Since P.W.1 was in possession of family lands, P.W.5 - Marayammal was living in Athikkattu Thottam belonging to Natarajan. These aspects are not much disputed by the accused.

4. The facts which led to the prosecution case on the allegation that the accused caused the death of his brother-in-law Natarajan, could briefly be narrated thus:- P.W.1 - Periasamy married Sornaththal - sister of Natarajan; while the accused married another sister Poovaththal. Since the whole family lands of 35 acres was given to his co-brother - P.W.1, the accused has driven away his wife Poovaththal. Poovaththal and her children had taken shelter with their mother P.W.5 - Marayammal, who was living in Athikkattu Thottam. The accused was inimical towards the family of deceased Natarajan and P.W.1 for more than one reason; (i) that the entire family lands were in enjoyment of P.W.1; (ii) that his wife was living with P.W.5.

5. Further case of the prosecution is that on the date of occurrence, the accused scolded P.W.5 - Marayammal, while she was grazing the Cattle. P.W.5 informed the same to P.W.1 - Periasamy, who in turn informed the same to Natarajan. To question about the conduct of the accused, on the night of 02.02.1996, deceased Natarajan, P.Ws.1 to 3, Dhandabani and one Veerasamy went to the house of the accused in Veerachozhapuram. While they were near his house, the accused again scolded P.W.5. Enraged over the same, Natarajan went inside the house. At that time, the accused stabbed Natarajan with M.O.1 - Soorikathi. The deceased in turn, attacked the accused with Power Loom Wooden Log (M.O.2) on his head. The accused escaped from the scene of occurrence.

6. Injured Natarajan was taken to the Hospital in T.V.S.50 Moped of Dhandabani. P.W.3 - Kuppusamy accompanied them. On the way to Hospital, Natarajan was found dead and hence, they returned back. Dhandabani and P.W.3 brought back the body of the deceased and placed it near the house of the accused.

7. Complaint and registration of F.I.R. P.W.1 - Periasamy went to Vellakoil Police Station at 7.00 a.m. on the following day i.e. on 03 .02.1996 and gave Ex.P.1 - Complaint. On the basis of Ex.P.1 - Complaint, P.W.10 - Inspector of Police registered the case in Crime No.70 of 1996 under Sec.302 I.P.C. under Ex.P.12 - First Information Report.

8. Investigation. P.W.10 - I.O. had taken up the investigation. He has inspected the place, where the body of Natarajan was found lying. Regarding that place, Ex.P.2 - Observation Mahazar and Ex.P.13 - Rough Plan were prepared. Photographs were also taken. M.O.10 - Blood Stained Dhoti was seized under Ex.P.7 - Seizure Mahazar. Scene of occurrence

- house of the accused was also inspected and Ex.P.3 - Observation Mahazar and Ex.P.14 - Rough Plan regarding the house of the accused were prepared. M.Os.2 to 7 were seized under Ex.P.4 - Seizure Mahazar.

9. Inquest was held on the body of deceased Natarajan, examining the witnesses in the presence of Panchayatdars. Ex.P.5 is the Inquest Report. After inquest, body was sent to Autopsy. P.W.8 - Dr. Manoramani has noted the injuries on the body of deceased and issued Ex.P.9 - Post-mortem Certificate. He opined that the deceased died of shock and haemorrhage due to injury to heart.

10. Case in Crime No.71 of 1996. P.W.11 - Head Constable attached to Vellakoil Police Station received intimation (Ex.P.24) from Kangeyam Hospital about the admission of the accused in the Hospital. On receipt of such intimation, P.W.11 went to the Hospital and recorded the statement of the accused. On the basis of his statement, P.W.11 registered the First Information Report - Ex.P.25 in Crime No.71 of 1 996 under Ss.147, 448 and 323 I.P.C. against the deceased Natarajan, P.Ws.1 to 3 and others.

11. Simultaneous investigation in Crime No.71 of 1996 was taken up by P.W.10 - I.O. The accused was arrested on 11.02.1996. His confession statement (Admissible Portion - Ex.P.17) led to the recovery of M.O.1 - Soorikathi under Ex.P.11 - Seizure Mahazar. Upon investigation, Crime No.71 of 1996 was referred as " Mistake of Fact ". The accused was charge sheeted for the offence punishable under Sec.302 I.P.C. in Crime No.70 of 1996.

12. To prove the guilt of the accused, in the trial Court, prosecution has examined P.Ws.1 to 11. Exs.P.1 to P.25 were marked; M.Os.1 to 15 were remanded to Court. The accused was questioned under Sec.3 13 Crl.P.C. about the incriminating circumstances and evidence. Denying all of them, the accused had stated that a false case is foisted against him. During questioning, the accused had filed a statement in writing stating that deceased Natarajan and his servants viz. Dhandabani, Kuppusamy (P.W.3), Veerasamy and others came to his house during night time and deceased had beaten him with M.O.2 - Power Loom Wooden Log. It is the further case of the accused that since there was an attempt on his life, necessarily he had to act in self-defence.

13. The trial Court rejected the defence version and was of the view that the prosecution witnesses and deceased Natarajan were not right in going to the house of the accused on the night of 02.02.1996. But the trial Court found that there was no justifiable reason for the accused to inflict deep cut injury on the chest of the deceased. The defence plea was rejected pointing out that no foundation is laid for the plea of self-defence, either in the evidence or during questioning under Sec.313 Crl.P.C.

14. Seriously assailing the findings of the trial Court, the learned counsel for the Appellant / Accused contended that when the deceased Natarajan had hit the accused with M.O.2 - Wooden Log, the accused had only retaliated the same and that the trial Court ought to have accepted the plea

of self-defence put forth by the accused. Case of prosecution is attacked on the ground that the earliest version is not produced before the Court and that the counter case in Crime No.71 of 1996 was not properly investigated.

15. The credibility of the prosecution case is further attacked on the ground that the origin and genesis of the occurrence are not properly put forth and that in all probabilities the deceased, who was running the Power Loom Factory ought to have brought M.O.2 - Wooden Log, which aspect was not properly appreciated by the trial Court. Thus the main plea urged by the Appellant / Accused is the plea of selfdefence, which according to the Appellant / Accused, was not properly appreciated by the trial Court.

16. Repelling the arguments of the Appellant / Accused, the learned Government Advocate (Crl.Side) Mr.A.N.Thambi Durai has submitted that the injuries sustained by the accused are only simple in nature and that no right of private defence was available to the accused. Drawing the attention of the Court to Ex.P.25 - Referred Charge Sheet, the learned Government Advocate has further submitted that the Investigating Officer has thoroughly investigated the case and that the accused cannot successfully urge upon those points that there was no proper investigation. Submitting that the plea of self-defence is unsupported by any materials on record, the learned Government Advocate prayed for sustaining the conviction.

17. In the light of facts and evidence adduced is the Appellant / Accused right in putting forth the plea of self-defence ? is the short point arising for consideration. Considering the number of injuries / single blow on the chest, whether the conviction under Section 30 4 Part II I.P.C. warrants any interference ? is yet another point arising for consideration in this appeal.

18. Without much elaborating on the factual details, we may straightly proceed to consider the main point urged by the Appellant / Accused that the accused had only acted in self-defence. This plea is to be considered in the light of ill-will subsisting in the mind of the accused. As noted in Para (4), the Appellant / Accused was enraged over the fact that P.W.1 - Periasamy was in possession of the entire family lands. Nurturing ill-will, the Appellant / Accused had also driven away his wife Poovaththal, who had taken shelter with her mother - P.W.5, who is residing in Athikkattu Thottam, which was under the cultivation of Natarajan. From the evidence of P.W.5 - Marayammal, it is clear that few days prior to the occurrence, while she was grazing the Sheep, the Appellant / Accused scolded her. Further the accused questioned the conduct of P.W.5 in handing over the possession of the family lands to P.W.1. On that day, the accused chased P.W.5 with Aruval.

P.W.5 informed the same to her elder son-in-law - P.W.1, who in turn, informed the same to deceased Natarajan. On hearing about the same, quite naturally that the deceased Natarajan must have infuriated over the same.

19. On the night of 02.02.1996 - 10.30 p.m., Natarajan gathered his three servants viz. Dhandabani, Kuppusamy (P.W.3) and Veerasamy

and went to the house of the accused along with P.W.1 in Vellakoil, Veerachozhapuram. On their way, his father-in-law P.W.2 - Kumarasamy also joined them. The group of men went to the house of the accused at the odd time at about 10.30 - 11.00 p.m. Laying emphasis upon the odd time, in which the deceased Natarajan gathered men and went to the house of the accused to question his conduct, the learned counsel for the Appellant / Accused submitted that the deceased is the aggressor. In the light of the evidence, this contention has no merits. No doubt, deceased Natarajan gathered number of persons and went to the house of the accused during the night time, which may be improper. But from the evidence, it is seen that the persons who accompanied deceased Natarajan were only outside the house of the accused talking with each other. From the evidence of P.W.1, it is seen that eh';fs; 5 ngUk; tPl;L jpz;izapy; cl;fhh;e;jpUe;njhk;/ mth;fs; ,UtUk; (Accused and P.W.2 - Kumarasamy) tPl;Lf;Fs; Rkhh; 1-2 kzp neuk; ngrpf; bfhz; oUe;jhh;fs;. It is obvious that only P.W.2 went inside the house and all others remained outside. It is not as if the accused was surrounded by deceased Natarajan along with the group of men to infer that they were the aggressors.

20. While P.W.2 - Kumarasamy was talking with the accused, the accused hurled vulgar abuses against his mother-in-law - P.W.5. On hearing the same, the deceased Natarajan angered over the same and went inside the house. Though he went inside the house, the first blow i. e., the cut injury was inflicted on the chest of the deceased only by the accused. From the evidence of P.Ws.1 to 3, it is clear that only after sustaining the stab injuries on the chest, Natarajan reacted to the same hitting the accused with M.O.2 - Wooden Log. The genesis of the occurrence is well brought out by the evidence of P.Ws.1 to 3. Having firstly inflicted stab injury on the deceased, it is not open to the accused to put forth the plea of self-defence.

21. The learned counsel for the Appellant / Accused contended that in all probabilities M.O.2 - Wooden Log must have been brought only by deceased Natarajan, who was running Power Loom Factory. It is the further contention that the intention of deceased Natarajan to attack the accused is to be inferred by the said act of carrying M.O.2 - Wooden Log. From the evidence of P.Ws.1 to 3 it is clear that Natarajan hit a blow on the accused with M.O.2 - Wooden Log, which was lying there. It is highly improbable that deceased Natarajan would have carried the same to the scene of occurrence. The point that the accused has no Power Loom is advanced for the first time only during the arguments. When the accused was questioned under Sec.313 Crl.P.C., he had not denied the same, nor it was put to the witnesses denying owning of Power Loom by the accused. Without laying such a foundation during trial, it is not open to the Appellant / Accused to raise this contentious point in the appeal.

22. The merit of the main contention on the availability of selfdefence is only to be considered. The learned counsel for the Appellant / Accused has contended that the case in Crime No.71 of 1996 was not properly investigated upon and thereby, the prosecution has suppressed the origin and genesis of the occurrence. It is the further contention that had there been proper investigation in Crime No.71 of 19 96, the plea of self-defence set up by the accused would have been found favourably. This contention has no

merits. As rightly pointed out by the trial Court, during trial no foundation is laid for establishing the plea of self-defence. During his questioning, the Appellant / Accused had not raised the plea; nor during trial, the same was put forth to P.Ws.1 to 3. Modicum of foundation for private defence was not at all laid during trial. Of course, even without specifically raising the plea, on the available evidence, it is open to the accused to urge the Court to consider the plea of self-defence. But there is no material on record to show that the Appellant / Accused had acted in self-defence.

23. On factual aspects and on the evidence on record, plea of self-defence is fragile and has no force. No doubt, as pointed out by the trial Court, deceased Natarajan was not right in going to the house of the accused at that night time, gathering men. But that does not in any way justify the wielding of the knife inflicting deep stab injury on the chest of the deceased. Upon hearing the accused again scolded P.W.5, deceased Natarajan went inside the house and at that time, the accused inflicted cut injury on the chest. It was only thereafter the deceased hit the accused with - Wooden Log.

24. It is the contention of the Appellant / Accused that the accused acted in self-defence, on being surrounded by Natarajan and his men and only the deceased firstly struck the accused with M.O.2 - Wooden Log. Without accepting this defence, for the sake of arguments, even if we assume that the deceased had beaten the accused with M.O.2, it is seen from Ex.P.10 - Accident Register that the accused had sustained only simple injuries. He has sustained lacerated injuries on the root of the nose and left parietal region; and contusion on the right upper arm. All the injuries sustained by the accused are only simple in nature. The injuries on the person of the accused are well explained by the prosecution. There is no merit in the contention that the prosecution has not explained the injuries. Considering the simple nature of injuries sustained by the accused, no right of private defence was available to the accused. This is all the more so, when the accused was already inimical towards Natarajan and the family members. The plea of self-defence was rightly rejected by the trial Court and no convincing ground is made out to take a different view.

25. The other point urged onbehalf of the Appellant / Accused is the delay in lodging the complaint and registration of the case. For the occurrence on the night of 02.02.1996, Ex.P.1 - Complaint was lodged at 7.00 a.m. on 03.02.1996. Contending that there is enormous delay in lodging the complaint, the learned counsel for the Appellant / Accused submitted that there was much deliberation or consultation in lodging the complaint, which throws doubt on the prosecution case. It is the further contention that the earlier oral complaint given by P.W.1 - Periasamy is suppressed by the prosecution with the intention to suppress the actual occurrence. This point was raised before the trial Court, which was well considered. Occurrence was on the night of 02.02.1996. Necessarily, the family members ought to have taken time to inform the death to their relatives and had taken time in lodging the complaint on the following day. There is no delay; and even if there is any delay, it is only reasonable.

26. The Appellant / Accused is proved to be responsible for causing the stab injury on the chest of the deceased. The single blow on the centre of the chest at the level of 4th ribs, on D/D, has entered into the sternal bone and has pierced the Right Ventricle, front side. 500 ml of blood present surrounding the heart. There was no premeditation or intention to cause the death. Had Natarajan not gone to the house of the accused, the deceased would not have met the fateful occurrence. The fatal blow was inflicted in the heat of moment. Considering the fact that there was no premeditation for the occurrence, the learned Sessions Judge has rightly convicted the accused under Sec.304 Part II I.P.C. Considering the nature of injury and circumstances of the case, the sentence of Rigorous Imprisonment of five years is also reasonable and cannot be said to be excessive. The finding of guilt, conviction and the sentence of imprisonment ought to be confirmed and this appeal is liable to be dismissed.

27. Therefore, the Judgment of Sessions Court, Erode in S.C.No.157 of 1996 (dated: 25.04.1997) convicting the Appellant / Accused under Ss.304 Part II I.P.C. and the sentence of Rigorous Imprisonment of five years are confirmed and this appeal is dismissed.

The Trial Court is directed to take immediate steps for securing the Accused to commit him to prison for serving the remaining period of sentence.

Index:Yes

Internet:Yes

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To
1. The Principal Sessions Judge,
Erode.

2. The Superintendent,
Central Prison, Coimbatore.

3. The Inspector of Police,
Vellakoil Police Station,
Erode District.

4. The Public Prosecutor,
High Court, Madras.